

PLANNING COMMITTEE – 21 JULY 2022**PART 2**

Report of the Head of Planning

PART 2Applications for which **PERMISSION** is recommended

2.1 REFERENCE NO - 21/503124/OUT			
APPLICATION PROPOSAL - Proposed Development of Up to 44 Dwellings (Outline Planning Application all matters reserved apart from means of access off Drake Avenue)			
ADDRESS - Land to The North of Elm Lane Minster-on-sea Sheerness Kent ME12 3RZ			
RECOMMENDATION – Grant Permission subject to a Section 106 planning agreement and the conditions set out below			
SUMMARY OF REASONS FOR RECOMMENDATION: The lack of a 5 year housing land supply triggers the tilted balance and the presumption in favour of development. There are no material considerations to outweigh the tilted balance in favour of the scheme. I see no material issue that cannot be resolved by conditions and a planning obligation and therefore recommend for approval.			
REASON FOR REFERRAL TO COMMITTEE: Parish Council Objection.			
WARD Sheppey Central	PARISH/TOWN Minster-on-Sea	COUNCIL	APPLICANT Provectus Holdings Limited AGENT Consilium Town Planning Services Limited
PUBLICITY EXPIRY DATE 08.02.2022			

1 SITE LOCATION AND CONTEXT

- 1.1 The site is located to the south-east of Minster and north of Elm Lane. It is approximately 2 hectares in site area, with a slight fall towards the western part of the site. The northern boundary is elevated to about 3 to 4 metres due to the redundant railway track of the former station. This part of the site is covered by trees and bushes and creates a dense green screen to existing properties on Drake Avenue.
- 1.2 The site is used as paddocks land and contains remains of the old Sheppey Light Railway and the former Minster on Sea Station which was closed in 1950. This paved the way for residential developments along Drake Avenue and Nelson Avenue.
- 1.3 The site is situated on the edge of the Minster urban area, which forms part of the designated urban area at West Sheppey (Minster, Halfway, Queensborough and Rushenden). This area is designated in the Local Plan as an urban area (policy ST3) and is one of areas to provide the potential focus of housing growth within the Borough.

- 1.4 There are a number of existing surface water drainages in the form of ditches that form a natural network of drainage for the site. The southern boundary forms a green screen that separates the site visually from Elm Lane and the adjacent fields.
- 1.5 The site is located approximately 700 metres to the south of the Minster local centre which provides a post office, convenience store, takeaways, public houses, non-food retail, hairdressers and other local service providers. At just over 1 kilometre to the west of the site is Minster-on-Sea Town Centre with further services including chemists and healthcare. There are 4 primary schools within 1 kilometre of the site, the nearest being the St George's Church of England school located approximately 500 metres to the northeast of the site. The nearest secondary school is the Oasis Academy, located about 2 kilometres to the west of the site off the B2008 Minster Road.
- 1.6 The proposed site access to Drake Avenue is approximately 400 metres to the existing southbound bus stop on Scocles Road just north of the Drake Avenue junction with the northbound bus stop approximately 140 metres further north. There are several bus services that normally use these stops operated by Arriva, Chalkwell and Travelmaster.
- 1.7 The site's history is related to the former Minster on Sea light rail station and rail track. The remains of the track are still present along the northern boundary of the site.
- 1.8 There are no public rights of way (PROW) within the application site. However, PROWs ZS7 (to the south) and ZS6 (to the west) are in the vicinity of it.

2 PROPOSAL

- 2.1 The application seeks permission for: The proposed development comprises of up to 44 dwellings on the site. One existing bungalow at 67 Drakes Avenue would be demolished to provide access.
- 2.2 The proposal is an outline planning application with all matters reserved apart from a highway access, would be obtained off Drake Avenue to the north of the site (see drawing 66200254-SWE-ZZ-XX-DR-TP-0001 Revision P02)
- 2.3 The application is accompanied by an illustrative masterplan which shows areas of open space and parking as well as illustrative siting for the dwellings.

3. PLANNING HISTORY

- 3.1 There is no relevant planning history on this site. However there are a number of outstanding planning applications on unallocated sites within the vicinity of the site:

20/504408/OUT Land West Of Elm Lane Minster-on-sea Kent - 100 units, now at Appeal for non determination (this item is also being reported elsewhere on this agenda)

21/502256/OUT Land North East Of Nelson Avenue – 64 units on eastern edge of Minster ridge.

22/502086/OUT Land To The East Of Scocles Road –650 units

- 3.2 This site was not submitted for the call for sites for the Bearing Fruits local plan and so its suitability was not considered by members at that stage.

4. SUMMARY INFORMATION

Proposed	
Site Area	2 Ha
Approximate Ridge Height (m) 2 At	Not specified
Approximate Eaves Height (m)	Not specified
No. of Storeys	2
Parking Spaces	At least 2 per dwelling
Density	22 PH.

5. PLANNING CONSTRAINTS

- 5.1 The land is unallocated land outside the built-up area boundary for Minster. The site is directly to the east of the allocated housing site (policy A21.3) to the East of Scocles Road, allocated for 50 dwellings, and also known as The Slips and which benefits from outline planning (16/508117/OUT) and a recent reserved matters approval (21/504305/REM). There are no specific planning constraints applying to the site.

6. PLANNING POLICY

National Planning Policy Framework

- 6.1 Paragraph 9 of the National Planning Policy Framework (NPPF) states that planning decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account to reflect the character, needs and opportunities of each area. Paragraph 11 states that planning decisions should apply a presumption in favour of sustainable development. This means approving development proposals that accord with an up-to-date development plan without delay; or where the development plan is absent, silent or out of date planning permission should be granted unless the application of policies in the NPPF that protect

areas or assets of particular importance provides a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

6.2 Paragraph 12 of the NPPF clarifies that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan, permission should not normally be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

6.3 The sections of the latest version of the NPPF can be found below.

[1. Introduction](#)

Paragraphs 1 to 6

[2. Achieving sustainable development](#)

Paragraphs 7 to 14

[3. Plan-making](#)

Paragraphs 15 to 37

[4. Decision-making](#)

Paragraphs 38 to 59

[5. Delivering a sufficient supply of homes](#)

Paragraphs 60 to 80

[6. Building a strong, competitive economy](#)

Paragraphs 81 to 85

[8. Promoting healthy and safe communities](#)

Paragraphs 92 to 103

[9. Promoting sustainable transport](#)

Paragraphs 104 to 113

10. Supporting high quality communications infrastructure

Paragraphs 114 to 118

11. Making effective use of land

Paragraphs 119 to 125

12. Achieving well-designed places

Paragraphs 126 to 136

14. Meeting the challenge of climate change, flooding and coastal change

Paragraphs 152 to 173

15. Conserving and enhancing the natural environment

Paragraphs 174 to 188

16. Conserving and enhancing the historic environment

Paragraphs 189 to 208

17. Facilitating the sustainable use of minerals

Paragraphs 209 to 217

National Planning Practice Guidance (NPPG):

Air quality; Appropriate assessment; Climate change; Consultation and pre decision matters; Determining a planning application; Historic environment; Housing supply and delivery; Natural environment; Noise; Open space, sports and recreation facilities, public rights of way and local green space; Planning obligations; Transport evidence bases in plan making and decision taking; Travel Plans, Transport Assessments and Statements; Use of planning conditions’.

Development Plan

- 6.4 Paragraph 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that development proposals are determined in accordance with the development plan unless material considerations indicate otherwise.

Bearing Fruits 2031: The Swale Borough Local Plan 2017

Policies ST 1 Delivering sustainable development in Swale;

ST 2 Development targets for jobs and homes 2014- 2031;

ST3 The Swale settlement strategy

By use of previously developed land within defined built up area boundaries and on sites allocated by the Local Plan, development proposals will be permitted in accordance with the following settlement strategy: 1. The main Borough urban centre of Sittingbourne will provide the primary urban focus for growth, where development will support town centre regeneration and underpin the town's role as the principal centre; 2. The other Borough urban centres of Faversham and Sheerness will provide the secondary urban focus for growth at a scale and form compatible to their historic and natural assets and where it can support their roles as local centres serving their hinterland. Additionally at Sheerness its role and functioning will be supported by the other urban local centres within the West Sheppey Triangle to meet the Island's development needs on previously developed sites or at existing committed locations and allocations well related to the urban framework and strategic transport network; 3. The Rural Local Service Centres will provide the tertiary focus for growth in the Borough and the primary focus for the rural area. At allocated sites relating well to the existing settlement pattern and the character of the surrounding countryside, development will provide for the local housing or employment needs for their home and surrounding communities, whilst supporting existing and new services; 4. Other villages with built-up area boundaries, as shown on the Proposals Map, will provide development on minor infill and redevelopment sites within the built up area boundaries where compatible with the settlement's character, amenity, landscape setting, heritage or biodiversity value and; 5. At locations in the open countryside, outside the built-up area boundaries shown on the Proposals Map, development will not be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.

ST 6 The Isle of Sheppey area strategy;

'On the Isle of Sheppey, settlements within the West Sheppey Triangle are the focus of development and long-term change...'

CP 1 Building a strong, competitive economy;

CP 4 Requiring good design;

CP8: Conserving and enhancing the historic environment

DM 7 Vehicle parking;

DM 14 General development criteria;

DM 19 Sustainable design and construction;

DM 21 Water, flooding and drainage;

DM 28 Biodiversity and geological conservation;

DM29 Woodlands and Trees

Supplementary Planning Documents:

Developer Contributions (2009); Parking Standards (2020); (chapter 2 and standards in appendix a) Landscape Character and Biodiversity Appraisal (2011).(in Central Sheppey Farmlands landscape character area)

7. Consultation

Statutory Bodies (statutory consultees)

Environment Agency

No comment

Natural England

Since this application will result in a net increase in residential accommodation and is located within six kilometres of the SPA, impacts to the coastal Special Protection Area(s) and Ramsar site(s) may result from increased recreational disturbance. Your authority has measures in place to manage these potential impacts through the agreed strategic solution which we consider to be ecologically sound.

Subject to the appropriate financial contribution being secured, Natural England is satisfied that the proposal will mitigate against the potential recreational impacts of the development on the site(s).

Kent County Council:-

KCC Archaeology No Response

KCC Flood Risk/Lead Local Flood Authority

Having reviewed the latest information submitted we are now satisfied with the principles proposed for dealing with surface water, namely a system of attenuation with a restricted

discharge to a neighbouring watercourse and as such remove our previous objection. Suggest Conditions, which are included below.

KCC Developer Contributions

Request Summary Per House (x44)	Per 'applicable' Unit	Total	Project
Primary Education	£6,800.00	£299,200.00	Towards the new 2FE Primary School construction upon land at Rushenden, Queenborough
Secondary Education	£4,540.00	£199,760.00	Towards Highsted & Borden Grammar School expansions
(Applicable' excludes: 1 bed units of less than 56 sqm GIA, and sheltered accommodation)	Per 'applicable' Unit	Total	
Community Learning	£16.42	£722.48	Contributions requested towards additional resources and classes at Sheerness Adult Education Centre
Youth Service	£65.50	£2,882.00	Contributions requested towards additional Youth Service resources locally
Library Bookstock	£55.45	£2,439.80	Contributions requested towards additional services, resources, and stock at Minster Library

Social Care	£146.88	£6,462.72	Specialist care accommodation, Assistive technology systems, adapting Community facilities, sensory facilities and Changing places in Swale District
All Homes to be Wheelchair Accessible & Adaptable Dwellings in accordance with Building Regs Part M 4 (2)			
Waste	£183.67	£8,081.48	Towards additional capacity at the HWRC & WTS in Sittingbourne
Broadband:			<p>Condition: Before development commences details shall be submitted for the installation of fixed telecommunication infrastructure and High-Speed Fibre Optic (minimal internal speed of 1000mb) connections to multi point destinations and all buildings including residential, commercial and community. The infrastructure installed in accordance with the approved details during the construction of the development, capable of connection to commercial broadband providers and maintained in accordance with approved details.</p> <p>Reason: To provide high quality digital infrastructure in new developments as required by paragraph 112 NPPF.</p>
<i>Highways</i>			<i>Kent Highway Services request a contribution of £1200 per dwelling to be used on providing access to bus services for residents.</i>

KCC Biodiversity (to revised BNG Plan)*Biodiversity and Ecological Enhancements*

Under section 40 of the NERC Act (2006), and paragraph 175 of the NPPF (2019), biodiversity must be maintained and enhanced through the planning system. Additionally, in alignment with paragraph 175 of the NPPF 2019, the implementation of enhancements for biodiversity should be encouraged.

Our previous response requested the submission of a completed Defra metric to understand the potential biodiversity gains/losses associated with the proposed development. This has now been provided and has concluded that within the current layout of the development, a 10.24% increase in habitat units, and a 1177.30% increase in hedgerow units can be achieved on-site. We are satisfied that the calculations, and therefore the results, are accurate and that the development can achieve an appropriate biodiversity net-gain (BNG).

Crucially however, achieving BNG relies on effective habitat creation and management, e.g., the establishment and maintenance of the wildflower meadows. Appendix C within the submitted BNG report sets out appropriate management prescriptions which will have to be adhered to for the development to ensure a BNG is achieved. As such, we advise that a condition (or S106 agreement) is utilised to secure the long-term future management of the site in alignment with the details as described in appendix C. This could take the form of a Landscape and Ecological Management Plan (LEMP) – suggested wording included

Offsite Biodiversity Net-Gain

Of note, accompanying information from the developer states that the 10.24% increase in habitat units can be further increased to 34.63% via the purchase of offsite biodiversity credits from a third-party provider.

In the current absence of any regulatory framework or accreditation for biodiversity net gain credit providers, we are not in a position to comment on the validity of those offered as part of

this application. Furthermore, as there is no detailed information on the credits themselves, we cannot confirm the 34.63% gain. Any offsite credit must properly account for the distance between the development and off-site habitat within the metric – we have not been able to determine if this was applied. In the absence of detailed information concerning the offsite credits, we are also unable to provide assurances in respect of the following anticipated criteria for offsite provision:

- On land made available by a site provider with sufficient rights to the land;
- Will be delivered by a specified person or body considered fit and proper to undertake the enhancement works;
- The land will be suitably managed to meet the required enhancement;
- Work commenced 30 January 2020 or later;
- The enhancement will be maintained for at least 30 years after the completion of those works;

- The credit is measured using the most up to date biodiversity metric against a baseline metric assessment;
- That the credit may be allocated to development in accordance with the terms of the conservation covenant or planning obligation;
- That the credit is available to be allocated to this development;
- That it complies with rules on additionality and stacking including on protected sites;
- That it is in England, and;
- Monitoring and reporting for that site over the 30-year period.

If the local planning authority decides that offsite biodiversity net-gain is achievable, we advise that a condition is attached to any granted planning permission and Members will note proposed condition 16 below.

Roosting Bats

The ecology report has identified a tree on-site which has moderate potential to support roosting bats. As all bats and their roosts are protected, and because this tree would be lost/impacted by the development, the report has recommended that emergence surveys are carried out between March and August. This is alignment with current guidance.

We concur and advise that these surveys are undertaken and submitted prior to determination of the application. This is in accordance with paragraph 99 of the ODPM 06/2005, which states “it is essential that the presence or otherwise of protected species and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision”. If bats are found to be roosting on-site, mitigation proposals will need to be proposed. (note now completed - the bat survey which shows there were no bats emerging from the tree in August or September when the surveys were completed.)

Designated Site

The development includes proposals for new dwellings within the zone of influence of the Medway Estuary & Marshes Special Protection Area (SPA) and Wetland of International Importance under the Ramsar Convention (Ramsar Site). Swale Borough Council will need to ensure that the proposals fully adhere to the agreed approach within the North Kent Strategic Access Management and Monitoring Strategy (SAMMS) to mitigate for additional recreational impacts on the designated sites and to ensure that adequate means are in place to secure the mitigation before first occupation.

A decision from the Court of Justice of the European Union has detailed that mitigation measures cannot be taken into account when carrying out a screening assessment to decide whether a full ‘appropriate assessment’ is needed under the Habitats Directive. Therefore, we advise that due to the need for the application to contribute to the North Kent SAMMS there is a need for an appropriate assessment to be carried out as part of this application.

In response to BNG proposals

We are satisfied with the metric calculations for the on-site net-gain, i.e., a 10% on-site gain is being achieved. However, no further information has been provided in respect of the offsite credit setup, such as the metric calculation itself, what enhancement will be delivered and where this will be sited. Where possible, biodiversity net-gain should be delivered as close to the impact as possible and we would encourage any offsite net-gain to be delivered within the district or, at the very least, the county.

In the current absence of any regulatory framework or accreditation for biodiversity net gain credit providers, we are not in a position to comment on the validity of those offered as part of this application. Further, as there is no detailed information on the credits themselves, we cannot confirm the 34.63% gain. Any offsite credit must properly account for the distance between the development and off-site habitat within the metric – we have not been able to determine if this was applied. In the absence of detailed information concerning the offsite credits, we are also unable to provide assurances in respect of the following anticipated criteria for offsite provision:

- on land made available by a site provider with sufficient rights to the land
- will be delivered by a specified person or body considered fit and proper to undertake the enhancement works
- that the land will be suitably managed to meet the required enhancement
- that work commenced 30 January 2020 or later
- that the enhancement will be maintained for at least 30 years after the completion of those works
- that the credit is measured using the most up to date biodiversity metric against a baseline metric assessment
- that the credit may be allocated to development in accordance with the terms of the conservation covenant or planning obligation
- that the credit is available to be allocated to this development
- that complies with rules on additionality and stacking including on protected sites
- that it is in England
- monitoring and reporting for that site over the 30 year period

We would advise that further information on the off-site biodiversity credits is requested from the applicant. (KCC is now happy to go ahead with proposed national standard condition)

KCC Highways

I can confirm that the provision of swept path analysis of the refuse freighter does demonstrate that the proposed access geometry would be sufficient to accommodate the entry and exit of the maximum size vehicle expected to service the development. The junction radii have been increased to 5m from the initial plans that were submitted with 4.5m radii, and access width retained as 5.5m to allow 2 HGVs to pass in accordance with the street type referenced in Kent Design Guide for this scale of development.

Additional response 17.05.2021

Assessment of the highway network had flagged up that the junction of Barton Hill Drive with Minster Road would already be operating over capacity by the end of the Local Plan period without the development, so further work was requested to assess the cumulative impact that the 3 current applications in the locality of Elm Lane would have. In addition, improvements to the junction have been investigated to consider the level of network performance that could be gained. This work has been concluded and demonstrates that the capacity of the junction would not be increased enough to address the Local Plan period background growth alone without a major upgrade or other significant changes to the wider highway network. The level of impact at that junction from the proposed developments around Elm Lane and Nelson Avenue would not warrant the cost of the likely intervention required.

Instead, it is considered that the impact on Barton Hill Drive/Minster Road from this application can be addressed through public transport contributions to make better use of bus services in the area. Consequently, the Highway Authority will request a contribution of £1,200 per dwelling to be used on providing access to bus services for residents.

As noted in my previous response, the proposed access onto Drake Avenue shown on drawing 66200254-SWE-ZZ-XX-DR-TP-0001 Revision P02 is agreed, having been tracked for the largest size refuse vehicle. The swept path analysis does indicate that some waiting restrictions may be required to secure turning movements, if necessary, noting that it may be possible to provide some replacement parking along the proposed access road when considering any Reserved Matters application. Additionally, I am satisfied that the appropriate sightlines for the junction can be achieved and provided within the existing highway boundary.

Suggests various conditions, and Members will note conditions proposed below (21, 22, 23)

Other Statutory Bodies:-

Kent Police

Advise should follow secured by design.

Southern Water

Southern Water has undertaken a desktop study of the impact that the additional foul sewerage flows from the proposed development will have on the existing public sewer network. This initial study indicates that these additional flows may lead to an increased risk of foul flooding from the sewer network. Any network reinforcement that is deemed necessary to mitigate this will be provided by Southern Water.

Southern Water and the Developer will need to work together in order to review if the delivery of our network reinforcement aligns with the proposed occupation of the development, as it will take time to design and deliver any such reinforcement.

Southern Water hence requests a condition to be applied: Occupation of the development is to be phased and implemented to align with the delivery by Southern Water of any sewerage network reinforcement required to ensure that adequate waste water network capacity is available to adequately drain the development.

NHS Kent and Medway Group (CCG)

The CCG has assessed the implications of this proposal on delivery of general practice services and is of the opinion that it will have a direct impact which will require mitigation through the payment of an appropriate financial contribution.

General Practice: £38,016 (£360/unit)

Greenspaces Manager .- No Response

8. REPRESENTATIONS

Minster on Sea Parish Council

Objection

The proposal, for the development of a substantial Greenfield Site, lies within the open countryside, within a predominantly rural setting, outside the Local Plan Development Area.

The development if it goes ahead, will result in the loss of open countryside, to the detriment of a much-loved landscape, precious rural amenity and residents' well-being.

It would also displace the prolific wildlife that has long been a feature of the site putting further pressure on Sheppey's ever shrinking natural habitats.

It is also the impact zone of the Special Protection Area for Ecology in in this part of Sheppey's countryside which is specifically targeted at wildlife conservation through habitat protection.

This prominent hillside site is characterised by undulating topography forming a crest towards the centre with a gentle gradient down to the south and north. Put simply, any development of the site will have a significant adverse impact on the landscape character of the area.

The Urban Extensions Study [referring to landscape character study] endorses this point, advising that any significant amount of development across this prominent higher ground would be exceptionally visible in sensitive views from the low-lying marshland to the south up towards Minster Abbey and the historic core of Minster. These harmful landscape impacts would be impossible to offset. Furthermore, the Parish Council must emphasise the fundamental effect on the view of the village to Minster Abbey from the A2500 Lower Road which historically and culturally is of great importance and will be lost. Moreover, the release of the site would make containment difficult and development pressures further to the east hard to resist. The number of dwellings proposed would clearly represent over-intensive development of the site, exacerbated by the height, bulk and close proximity of dwellings in the street-scene. The over-all effect would be incompatible with the scale, design, and character of the established low-density housing that typifies the surrounding area.

Existing problems of surface-water flooding in the Nelson Avenue/Drake Avenue area would be increased rather than alleviated by the new development. The main river downstream of the site is the Scrapsgate Drain which discharges to the coast. Here, it would be beneficial to point out that fluvial flooding is a serious concern. Water run-off and field drainage will therefore be problematic.

The proposal will exacerbate the problem and overwhelm local drainage systems where flash flooding will occur.

Additionally, surface water sewers will flood into foul sewers and overload both the surface water and combined sewer networks which will be especially problematic.

The main access to the site, in Drake Avenue, will have its own problems, with the sheer volume of traffic generated within the site inevitably increasing congestion in a residential road already inadequate in terms of parking and passing, with a further reduction in spaces for existing residents as a result of the width of visibility splays at the access itself. Scocles Road is critically overloaded already as will Elm Lane become, with poor visibility on dangerous bends, narrow 'pinch points', and inadequate speed restrictions - culminating in queues and tailbacks at the junction with the A2500 Lower Road, which is itself operating at above its design capacity. The A249 has far exceeded its design capacity and is critically congested from the Island to the M2. The situation on this road is deemed so serious that Highways England - the Government's appointed

Highway and Traffic Authority - has imposed a Condition on larger planning applications coming forward for housing sites in Swale until scheduled improvements are made under the Roads Investment Strategy and Housing Infrastructure fund to both M2 Junction 5 and the A249 Grovehurst Junction. No such sites given permission shall be fully occupied until the opening to the public of these completed schemes.

The reason given is "To ensure (these roads) continue to be an effective part of the national system of routes for through traffic, and to satisfy the reasonable requirements of road safety". Interestingly, Highways England also notes that "We do not accept the argument that such sites are generating traffic that is the equivalent of 'daily fluctuations'. They are not. They, and all other sites, are individually and cumulatively contributing to growth in traffic".

The proposal will lead to the fragmentation of the village where urban sprawl will become the norm. It will also limit access to the existing village due to the chaotic nature of the resultant transport situation. As such, the proposal will bring about unacceptable consequences in highway terms where it will have an adverse impact on the local highway network. The site will not function well because of the lack of infrastructure either for the short term or for the lifetime of the development. It will result in more traffic on our already congested roads with many areas becoming impassable. If we take a look at the appalling traffic congestion, up to and onto the Island - both existing and imminent - simple common sense overrides any complex and sophisticated reports advocating adding to it!

The same can be said for the algorithms and national projections advocating the need for an increase in housing numbers. Take a look at all the other Sheppey sites in the pipeline, and the theoretical need for more simply evaporates. With specific regard to the application site, the vehement objections from local residents graphically illustrates the weakness of the case to approve this proposal.

From intractable problems of site drainage, access, to overlooking existing homes, loss of historic long-distance landscapes of the village from the Island's Lower Road, and the inevitable increase in tailbacks at the Scocles Road junction, the proposal can only diminish the quality of life for both Minster residents and the wider community. Furthermore, with overwhelming pressure on a whole range of public services on Sheppey, there is no justification for further adding to that via a spurious demand for more housing - especially since the current 5-year Target for new-build housing in Swale, including on the Island is under review.

In conclusion it would be beneficial to point out that Swale Borough Council's Pre-Planning Advice on this application is specific about the settlement strategy, under Policy ST3, which "seeks to restrict development in the countryside unless it is able to demonstrate that it would contribute to protecting its intrinsic value, landscape setting, tranquillity and beauty, its buildings and the vitality of rural communities". So, precisely what this current application fails to achieve. Minster-on-Sea Parish Council would say that 'cumulative' is also a key word here, as following the recent approval of 'The Slips', there are now three large sites under active consideration between Scocles Road and Elm Lane - the one being considered here, another awaiting an appeal decision, (after SBC's refusal, primarily on traffic grounds) and a third awaiting Swale Borough Council's

decision following Pre-Planning Advice where included in part of that Advice is that: "Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the cumulative impacts on the road network would be severe". Minster-on-Sea Parish Council would contend that the severity of that impact has now been demonstrated beyond doubt. In view of that, and for all of the other specific reasons given above, Minster-on-Sea Parish Council must urge Swale Borough Council to REJECT this application.

61 objections have been received from local residents, and are summarised as follows:

- Traffic Impact – cumulative impact of traffic of several sites, and of traffic feeding into Scocles Road
- Lack of GP surgery capacity
- Lack of school places
- Not in keeping with adjoining bungalows
- Long Walk to local facilities
- Loss of riding school facilities
- Cumulative effects of drainage
- Roosting Bats
- Adverse Impact on Wildlife
- Loss of countryside
- Should not be demolishing an existing bungalow to provide access
- Loss of security from development of former rail station embankment
- Should focus on brownfield sites, rather than develop greenfield sites

9. BACKGROUND PAPERS AND PLANS

9.1 The application has been supported by a significant number of drawings (though with the exception of the access drawings, these are illustrative), assessments, and reports. These include the following:

- Planning Statement
- Transport Statement (May2020) MLM Consulting with Highway Safety Report
- Design and Access Statement (Living Works Architects)
- Landscape Visual Impact Assessment (DPLC)
- Ecology Report (KB Ecology)
- FRA (HSP Consulting)
- Arboricultural Report (GRS)
- Flood Risk Assessment

10. PLANNING ASSESSMENT

10.1 The key Issues in this case are:

1. Principle of Development
2. Housing Need
3. Loss of Paddock Land

4. Visual and Landscape Impact
5. Traffic Impact and Access
6. Flood Risk and Drainage
7. Capacity of Site
8. Ecology and Biodiversity Net Gain
9. Habitat Sites
10. Trees

Principle of Development

- 10.2 The site of the proposed residential units does not have any specific allocation in the Local Plan. It is also located outside (but adjoining) the settlement boundary of Minster. However, the Council cannot currently demonstrate a five-year housing land supply. The current supply is 4.8 years. In this regard, Paragraph 11.d (known as the ‘tilted balance’) of the NPPF is triggered.
- 10.3 Paragraph 11.d makes it clear that relevant policies relating to the supply of housing should not be considered up to date if the Council cannot demonstrate a five-year supply of deliverable housing sites, and that there should be a presumption in favour of sustainable development, unless: “the application of policies in this Framework that protect areas or assets of particular importance (footnote 6) provides a clear reason for refusing the development proposed* or “any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole” (paragraph 11.d.(ii))”. This development would bring about a number of benefits that would outweigh any harm.
- 10.4 At the time of writing, Swale’s most recently published Housing Land Supply position is 4.6 years (February 2021) for the monitoring year 2019/20 and includes a 5% buffer as determined by the HDT score for that monitoring year (2019/20). Publication of Swale’s Housing Land Supply position for the monitoring year 2020/21 is imminent and is expected to be 4.8 years, demonstrating a slight improvement. In February 2022, the Department for Levelling Up Housing and Communities (DLUHC) had identified a score of 78% in the HDT, resulting in the need to apply a 20% buffer. Council officers did not agree the score was accurate and after engagement with colleagues at DLUHC, the test was re-run for Swale, giving a score of 105% (May 2022). The score of 105% requires a 5% buffer to be applied to the Housing Land Supply.
- 10.5 Members should note that on 27 July 2022, the adopted plan becomes 5 years old and performance against housing delivery is no longer assessed against the annual local plan figure of 776 but that of the “standard method”. For Swale, this means that the target will increase to 1,048 (or whatever the standard method figure is for that monitoring year). Assuming a 5% buffer, this means that from July 2022, the annual housing supply is assessed against an annualised figure of 1,100 dwellings per annum. (1,048 x 5 plus 5% = 5,502). The council is of the view that the current total deliverable 5 year supply is 5,441 dwellings. This would give a housing land supply of 4.95 years if this supply was rolled forward and assessed against the LHN.

- 10.6 Caselaw (the Woburn Sands Case) indicates that a ‘holistic’ approach needs to be taken in determining whether a plan in terms of housing supply is up to date. This would include the case where an inspector requires an early review, and that deadline has passed the local plan should be considered out of date in terms of housing land supply irrespective of the 5 year land supply figure in the plan. This applies to Bearing Fruits by virtue of the requirement for an early review (by April 2022) in the inspector’s report. Your officers advise that as any decision whether approval (due to Section 106 completion) or refusal (if appealed) would be after the 27th July 2022 and therefore should be assessed on the 4.95 year supply figure. (Equivalent to 63 dwellings)
- 10.7 Therefore, the local plan, in relation to relevant policies to the supply of housing only, is out of date. Also material however is the fact that the shortfall is marginal.

<u>Total deliverable five year supply July 2022</u>	
Phased extant planning permission (Large sites)	3,314
Phased extant planning permission (Small sites)	308
Phased local plan allocations without pp as at 31st March 2021	1,141
Phased emerging allocations in the LPR	385
Windfalls	384
Allowance for lapsed permissions (2.5%)	-91
Total	5,441

- 10.8 Although the site is outside the settlement boundary, it adjoins existing built form and is partially previously developed land – following a line of a number of developments along the course of the former light railway line.
- 10.9 The site is within close walking distance of services and public transport, although footway improvements are needed and planned as part of the adjoining local plan site. In the future footway improvement could be secured southwards to link to the Coop store on Thistle Way. The site is also located within a reasonable distance of the centre of Minster. It can, on balance, be considered a sustainable location, a previously developed site next to the urban edge, reasonably well located to facilities with proposed pedestrian improvements.

- 10.10 Other adverse effects are considered elsewhere in the report, however none of the exemptions to the presumption in favour of sustainable development (relating to heritage assets etc.) are triggered in this instance.
- 10.11 Elaborating on the issue concerning impact on nationally protected sites, in respect of footnote 6, the application site is located in close proximity to a designated heritage assets (Scocles Court (grade II) and Minster Abbey (grade I) – though not visible or reasonably in the setting of either and the site falls within the North Kent Marshes (SPA) and Ramsar sites which are European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).
- 10.12 In respect of the SPA, NPPF Para 177 confirms that the presumption in favour of sustainable development does not apply where the plan or project is likely to have significant effect on a habitat site, unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitat site. The section on this later in the report concludes that with appropriate mitigation through SAMMS payments there will be no impact on the integrity of the Habitat site.
- 10.13 Therefore the ‘tilted balance’ applies. This changes the ‘balancing exercise’ which the decision-taker (the planning officer, inspector or secretary of state) makes when deciding whether or not to grant planning permission; from a neutral balance where if the harms outweigh the benefits planning permission is usually withheld to a tilted balance where the harms should *significantly and demonstrably* outweigh the benefits for permission to be withheld.
- 10.14 Members should note that the case of *Suffolk Coastal DC v Hopkins Homes Ltd & Richborough Estates Partnership LLP v Cheshire East BC* [2017] UKSC 37; [2017] 1 W.L.R. 1865 determined that ‘relevant policies for the supply of housing’ included settlements boundaries, so these are considered out of date when there is no 5 year housing supply.
- 10.15 The circumstances in this case vis-a-vis application of this national policy test are very similar to that of Land west of Barton Hill Drive. (18/503135/OUT) A case refused against officer advice, allowed on appeal and with a partial award of costs against the Council.
- 10.16 The Inspector concluded:
- ‘relevant policies for the supply of housing should not be considered up-to-date. In such circumstances, paragraph 11 d) ii of the Framework indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. I have considered the proposal in the context of the presumption in favour of sustainable development....*

I find that the adverse impacts of the proposed development would not significantly and demonstrably outweigh its benefits, when assessed against the policies in the Framework taken as a whole. ... Therefore, the presumption in favour of sustainable development weighs in favour of the proposal.'

10.17 There has been similar decisions on a number of sites including South West Sittingbourne (17/505711/HYBRID).

10.18 Affordable Housing

10.19 The NPPF establishes that the requirement for affordable housing provision should be reflected in planning policy. The Framework goes on to require that affordable housing should be provided on site unless specific circumstances are met (Paragraph 63). Paragraph 65 of the NPPF establishes that where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the total number of homes to be available for affordable home ownership, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups.

10.20 In accordance with the NPPF, the local plan sets the requirement for affordable housing across the Council at Policy DM 8 which establishes the requirements for new development proposals of eleven or more dwellings. It establishes that in such schemes or where a need to provide affordable housing has been determined as appropriate,

10.21 The application site is located on the Isle of Sheppey. As such Policy DM8 of the Local Plan does not trigger any affordable housing provision for new development proposals on the Isle of Sheppey.

10.22 Wheelchair Units

10.23 Policy CP3 requires developments to meet the housing requirements of specific groups, including housing for disabled and other vulnerable persons. This is in line with paragraphs 62 and 112 of the NPPF.

10.24 Planning Practice Guidance makes clear that the provision of appropriate housing for people with disabilities, including specialist and supported housing, is crucial in helping them to live safe and independent lives.

10.25 The requirement for appropriate housing for people with disabilities would be conditioned if consent is granted.

Loss of Paddock Land

10.26 The paddocks are too small to be viable agricultural units in their own right so loss of agricultural land is not an issue. Paddocks do not meet the legal definition of open space and so there is no contradiction with the NPPF or local plan policies protecting open

spaces. Appeals have also considered areas of Paddock land to be areas of private amenity (like gardens) and not recreation of 'public value' and so not meeting the definitional test for public open space of the NPPF. Many appeal precedents have established that Paddocks meet the national policy definition of previously developed land as they are not agricultural land.

Visual and Landscape Impact

10.27 The application is accompanied by a Landscape Visual Impact Assessment (LVIA).

10.28 The LVIA describes:

- The assessment methodology and the existing baseline conditions at the site and within the surrounding area;
- The likely significance of landscape and visual effects; and
- the mitigation measures required to prevent, reduce, or offset adverse effects.

10.29 The proposal site is located within the Central Sheppey Farmlands landscape character area according to the Swale Landscape Character and Biodiversity Appraisal (SLCBA). The Central Sheppey Farmlands are part of the London clay ridge that runs across the northern half of the Isle of Sheppey. The ridge is a distinctive element of the character area rising from the flat alluvial marshland. Traditionally land use was predominantly pasture with occasional orchards but it is now mainly in arable cultivation. The landscape is considered to be moderately sensitive as prominent and undulating hills are important features. SLCBA states that further limited development could be absorbed but should be well integrated and make a positive contribution to the coherence of the landscape. The guidance states 'Avoid proposals that would be unduly prominent in highly visible locations, such as undeveloped south, east and west facing slopes and limit ribbon development.' As the site is well concealed on not on the prominent Minster Ridge or in the long-distance views from the Mainland it is considered in the lower end of sensitivity of this broad character area.

10.30 The LVIA concludes that the proposal site is of a medium to large scale development which is considered to be appropriate to its setting. There would be some limited effects on views from localised footpaths, but the proposal would not be prominent from the wider landscape setting.

10.31 The significance of the effect of the proposal is considered to be of Low Significance without additional mitigation. There are a limited number of receptor viewpoints identified where the effects would be significant without mitigation. These are limited to a section of public footpath ZS7 to the south of the proposal site and a short section at high elevations of public footpath ZS8 to the north of the proposal site. The effect of the proposal upon views gained from Scocles Road, and Elm Lane from locations over 200m the centre of the proposal site and locations on Lower Road is assessed as insignificant. The proposal would not affect views of the visually prominent ridge from the south or setting of historic features in Minster.

- 10.32 The Swale Landscape Character and Biodiversity Appraisal 2011 indicates that the surrounding landscape (which falls within the Mid Sheppey Farmlands character area) is of poor quality with moderate sensitivity to change. The application site is not within a designated landscape area and is not noted for its special quality or character.
- 10.33 The visual effects of the proposal would be mitigated through the management of the southern boundary hedgerow, the height of the ridge line of the proposed dwellings, the colour and nature of materials used in construction and the specification of plants within the landscape proposal. All of these are reserved matters issues.
- 10.34 The ridge height of proposed properties will not exceed that of dwellings on Nelson Avenue to avoid dominance in views gained from open fields to the south. Native trees used in the proposed open green space will provide sufficient canopy cover to screen dwellings to the north of the site.
- 10.35 It is anticipated, in the LVIA, that the effect of the proposal with mitigation outlined in the landscaping report above will significantly reduce the effects of the proposal upon visual amenity to Low Significance and reduce some effects of Low Significance to Insignificant.
- 10.36 These conclusions are accepted. An independent review of the LVIA by Land Use Consultants concludes
- ‘The Elm Lane LVIA follows the general principles set out within (standard guidance), ...
Although the assessment of visual effects is lacking in detail, it is considered that the assessment is fair and provides enough detail for the council to make a fully informed planning decision.’*
- 10.37 This site is therefore considered acceptable in landscape terms, and conceptually different from a number of other sites being promoted in Minster (as referred to above) which are much more sensitive being located higher in the Minster ridge and/or otherwise therefore more prominent and visible, and or affect the setting and views of Minster Abbey.
- 10.38 I therefore conclude that the development of this site for housing would cause no significant harm to the character or appearance of the countryside/landscape and that any harm can be adequately mitigated against through retention and reinforcement of vegetation along the southern boundary of the site. The scheme would therefore comply with local plan policy DEM24

Traffic Impact and Access

- 10.39 Paragraph 111 of the NPPF sets out that development should only be refused on highways grounds when an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Paragraph 92 promotes healthy, inclusive and safe places through a number of measures including ensuring streets are designed to allow easy pedestrian and cycle connections within and between neighbourhoods. This is further emphasised in Paragraph 104.

- 10.40 Policy DM6 sets out the requirements for managing transport demand and impact. The policy requires development proposals involving intensification of any existing access onto a strategic, primary or other route will need to demonstrate that it is of a suitable capacity and safety standard or can be improved to achieve such a standard. Policy DM7 requires compliance with the Swale Vehicle Parking SPD. The policy further requires cycle parking facilities on new developments to be of an appropriate design and in a convenient, safe, secure and sheltered location.
- 10.41 A Transport Assessment (TA) has been prepared by SWECO Consulting which confirms the proposed development is located within a sustainable area within walking distance of public transport services as well as a number of key service and amenities, thus reducing the reliance on private vehicles for everyday needs. However, footway improvements are needed to make use of these. This will in part be provided by the local plan housing site ST2 to the immediate west where this is part of the policy.
- 10.42 The illustrative masterplan shows the main site pedestrian and vehicular access formed to Drake Avenue to the north at the location of property No.67 Drake Avenue which will be demolished to enable a new access to be provided to the site as part of the proposals.
- 10.43 An emergency/cycle/pedestrian access is located at the existing site access to Elm Lane at the western end of its Elm Lane site frontage.
- 10.44 Drake Avenue is a 5.6-metre-wide residential road with 1.8 metre footways on both sides. The Transport Statement shows an existing and proposed layout illustrating how a site access could be formed to Drake Avenue using the land of No.67 Drake Avenue. The Kent Design Guide (KDG) states that a minor access road generally serves up to 100 dwellings and cul-de-sacs to this figure if an emergency access is provided. In accordance with KDG the junction radii to Drake Avenue has to meet a minimum 4.5m junction radii.
- 10.45 The proposed plan shows that an access is feasible within the frontage of property No.67 Drake Avenue that can also achieve access visibility splays for a 30mph design speed and include an initial wider 5.5 metre carriageway width plus footways measuring 1.8 metres.
- 10.46 KCC Highways and Transportation as Highways Authority has accepted this entrance design. They have also been in discussion with the applicants regarding potential off site highway improvements, however modelling work has shown these not to make significant difference and so they are of the opinion that improvements to off-site public transport, walking and cycling measures are more effective.
- 10.47 The traffic statement supporting the application estimates the residential development would generate 51 and 47 2-way person trips in the weekday AM and PM peak hours respectively, of which 23 would be vehicle trips. Equating on average to less than 1 vehicle trip every three during the peak hours.

10.48 The Highways authority have not made any objection regarding safety, congestion or capacity of the nearby road network. Also, sites on these roads were considered suitable for allocation in the adopted local plan.

10.49 Scocles Road will take the majority of traffic and is a road built to a good standard supporting a considerable volume of new development without records of problems or safety issues. As such officers have not recommended refusal on highways grounds for appropriate schemes along it. This is particularly the case at this site which is directly to the east of land granted outline consent for 62 house (the Slips site 16/508117/OUT) in 2018 and which was considered suitable by the Bearing fruits inspector (site ST4).

10.50 Members are reminded that threshold for refusal in the NPPF on traffic grounds is set out in Paragraph 111, which states:

‘Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe’

10.51 There is no evidence of safety or congestion impact, and certainly none at the threshold of ‘severe’. The fact that one junction in the network accessing the site would be at capacity by the end of the Local Plan period does not mean this severity test is broken, simply that there would be congestion. It would not be sustainable to refuse this scheme on anecdotal grounds unsupported by evidence or by the highways authority and this would create risks of an award of costs against the Council if it did and the applicant subsequently chose to appeal such a decision.

10.52 In the light of the number of objections on this point The Project Centre were commissioned to carry out an independent review. Their response is as follows. The full review is attached as appendix 1.:

Swale Borough Council (SBC) commissioned Project Centre (PCL) to provide a Technical Note (TN) reviewing highway matters relating to:

Outline application for proposed residential development for up to 44no. dwellings with vehicle and pedestrian access off Drake Avenue (Access only being sought).

It is understood that a Transport Statement (TS) was submitted in support of the application in May 2021, for up to 44 dwellings, with access onto Drake Avenue.

Kent County Council (KCC) Highways Team has also reviewed highways matters relating to the outline application, which are discussed below.

By way of summary:

We consider the development proposal to be acceptable in relation to highway matters for the following reasons:

The proposed access has been shown to operate sufficiently and accommodate refuse vehicles when accessing and egressing the site.

Visibility splays at the site access are sufficient, noting splays of 2.4m x 43m in both directions on Drake Avenue, as per the requirements for 30mph roads.

- As per KCC Highway comments, some waiting restrictions may be required to secure refuse turning movements, which may require existing parking to be relocated. This would be developed as part of the Reserved Matters application.
- Traffic generation of the site is anticipated to be low, with 23 two-way vehicle trips in the AM and PM peaks.
- All reserved matters are acknowledged to be addressed as part of the Reserved Matters application.
- In line with KCC Highways advice, we support their decision that mitigating the impact on Barton Hill Drive and Minster Road as part of this application, through public transport contributions to make better use of bus services in the area.
- The planning conditions outlined by KCC Highways in this report, should also be secured.
- In relation to National Planning Policy Framework (NPPF), we do not believe that there is valid reason to prevent or refuse this planning application on highway grounds.

Flood Risk and Drainage

10.53 Policy DM21 of the Local Plan sets out the requirements for water, flooding and drainage. The policy sets out a series of 10 criteria by which developments should adhere to. The Local Plan is consistent with the requirements of the NPPF which directs development away from areas of highest flood risk.

10.54 Using the Environment Agency flood risk map, it can be seen that the application site is located within Flood Zone 1, meaning it is an area with a low probability of river or sea flooding. Planning Practice Guidance confirms that the aim is to steer new development to Flood Zone 1. In respect of the Flood Risk Vulnerability Classification residential dwellings are classified as 'more vulnerable'. Within Flood Zone 1, Table 3 of the Planning Practice Guidance confirms that 'more vulnerable' uses in Flood Zone 1 are appropriate and an exception test is not required.

- 10.55 As the application site is greater than 1 ha a Flood Risk Assessment (FRA) is required. Such an assessment has been carried out by the applicant and the submission is supported by an FRA.
- 10.56 As stated above, the site is located within Flood Zone 1. Surface water runoff rates from developments should match greenfield runoff and follow natural or existing drainage routes and match infiltration rates and discharges as far as possible for all events up to and including the climate-change adjusted 1 in 100 year (1% AEP) design event.
- 10.57 Should infiltration not be feasible at this site, Kent County Council will expect surface water to be discharged into the adjacent watercourse towards the south of the site. The surface water drainage design would need to be designed to accommodate the 1 in 100 year storm with a 20% allowance for climate change, and additional analysis should outline the flooding implications for a greater climate change allowance of 40%.
- 10.58 Permeable paving would need to be provided to all access roads, drives and parking spaces on the development in order to function as treatment stage. The hierarchical assessment concludes that permeable paving, cellular soakaways and a small infiltration basin, are the most appropriate SuDS measures to implement on this development. Runoff from the site would be negligible given the proposal to discharge via infiltration drainage are recommended.
- 10.59 The principle of residential dwellings in Flood Zone 1 is considered acceptable. The application is supported by the necessary assessments and has been subject to relevant consultation which has found the proposal to be acceptable. If Members are minded to permit the application, the recommended conditions have been set out later in this report.

Capacity of Site

- 10.60 The illustrative masterplan shows that the site has capacity for 44 dwellings. Though there are some urban design deficiencies in the masterplan (which is simply an illustration on one way that 44 dwellings could be accommodated) the layout is a reserved matter so is dealt with at reserved matters stage.

Ecology and Biodiversity

- 10.61 Policy DM14 requires development to provide for an integrated landscape strategy that will achieve a high standard landscaping scheme that informs the earliest stages of a development proposal. The NPPF further requires development to provide provision and use of community facilities, which includes open space.
- 10.62 Policy CP7 requires developments to conserve and enhance the natural environment. The policy lists the ways in which that shall be achieved and includes the requirement for developments to make the enhancement of biodiversity and landscape as their primary purpose. The policy further requires a net gain in biodiversity in line with the NPPF's requirements. This is further supported by Policy DM 28 which further requires

proposals to be accompanied by appropriate surveys undertaken to clarify constraints or requirements that may apply to development. Paragraph 180 of the NPPF sets out the principles by which planning applications should be considered against in respect to habitats and biodiversity.

10.63 The application site is located within 6km of the following:

- The Swale (SPA) and Ramsar site, approximately 1.6km south;
- Medway Estuary & Marshes Special Protection Area (SPA) and Ramsar site, approximately 1.7km south;
- Thames Estuary & Marshes SPA and Ramsar, approximately 4.7km north-west;

10.64 These are European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species.

10.65A Preliminary Ecological Assessment (PEA) has been undertaken by KB Ecology Limited. Following the PEA which identified the risk of great crested newts being present, KB Ecology Ltd was later commissioned to undertake a great crested newt survey of one pond identified in the report. Water samples of Pond 2 (no access was granted to Pond 1 and Ponds 3 and 4 had been surveyed in 2017, so it was not judged necessary to re-survey them) were taken on 29 June 2020, following the strict methodology provided and sent to an accredited laboratory for eDNA analysis.

10.66 The result of the eDNA analysis came back as negative, indicating that no great crested newts had been present in Pond 2 in the 7-21 days prior to the sampling.

10.67 The PEA identifies ecological enhancement measures which include:

- Provision of hedgehog nesting boxes;
 - Provision of gaps under any new fencing to allow hedgehogs access onto all garden areas;
 - Provision of ready-made bird boxes on retained trees or integrated in new buildings;
 - Provision of integrated bat boxes on new buildings or bat boxes on retained mature trees;
 - Provision of bat friendly planting within the gardens;
 - Provision of integrated bee brick or bee block in the structure of the new building;
 - Provision of owl boxes in trees;
 - Establish climbing plants on walls and other vertical structures;
 - Establish wildflower plug/bulb planting in amenity grassland and private gardens;
- And
- Use of grass-free tapestry lawns

10.68 There are no unacceptable ecological impacts which could not be dealt with through appropriate mitigation secured by way of a planning condition, including a standard biodiversity net gain condition.

10.69 The illustrative masterplan Drawing SK001 Revision F (Dated 07.05.2022) has been revised to show appropriate on site mitigation, however as layout is a reserved matter it is not dealt with at this outline stage.

European Habit Impacts

10.70 It is acknowledged that the site is located within the Strategic Access Management and Monitoring Strategy (SAMM) area for the three North Kent Marshes Special Protection Areas.

10.71 Policy DM28 of the Local Plan 2017 states that no development will be permitted which may have an adverse effect on the integrity of the North Kent Marshes SPA through an increase in recreational disturbance on the over-wintering bird populations. Such development would not be in accordance with the Habitat Regulations 2010 (as amended).

10.72 Article 4(4) of the Birds Directive (2009/147/EC) requires appropriate steps to be taken to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

10.73 Residential development within 6km of any access point to the SPAs has the potential for negative impacts upon that protected area by virtue of increased public access and degradation of special features therein. The HRA carried out by the Council as part of the Local Plan process (at the publication stage in April 2015 and one at the Main Mods stage in June 2016) considered the imposition of a tariff system to mitigate impacts upon the SPA (£253.83 per dwelling as ultimately agreed by the North Kent Environmental Planning Group and Natural England, at the time of writing) – these mitigation measures are considered to be ecologically sound.

10.74 However, the judgement (People Over Wind v Coillte Teoranta, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, “it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.” The development therefore cannot be screened out of the need to provide an Appropriate Assessment (AA) solely on the basis of the agreed mitigation measures (SAMMS) and needs to progress to consideration under an AA. An AA has been undertaken and concludes that with the proposed mitigation there would be no significant effects on the conservation objectives of the SPAs.

Trees

10.75 Existing trees and vegetation are mainly located along the boundary of the site. A tree survey is included with this submission to assess the quality of trees within the site boundary and concluding that all trees are category C.

Developer Contributions

- 10.76 The use of planning obligations to address the impact of development and ensure they are acceptable in planning terms is well established in legislation and national, regional, and local planning policy. The NPPF and Swale Borough Council's Local Plan both recognise the importance of addressing the impacts of development and having effective mitigation in place to ensure that development can be accommodated sustainably.
- 10.77 The Council is keen to ensure that new development (particularly much-needed housing) continues to be delivered, as detailed in its Local Plan and the emerging Local Plan Review. The Local Plan and Local Plan Review not only sets out plans for the delivery of development but also provides the basis on which development can be delivered sustainably, and in a way that respects environmental limits and resident's quality of life.
- 10.78 In line with this, the adopted Local Plan (Bearing Fruits) sets out requirements to ensure that new development is delivered sustainably, and the Council's Developer Contributions SPD (2009) details requirements required from new development to mitigate impacts associated with development.
- 10.79 The total contribution required to mitigate the impacts of this development is £600,552.48
- 10.80 The applicant has agreed to this amount and agreed the following Heads of Terms being included in a Section 106 Agreement attached to any planning permission for the proposed development:

Conclusion

- 10.81 The site is outside the development boundary for Minster in the Local Plan. However, as the Council no longer has a five-year housing land supply then the 'tilted balance' applies, which means that policies relating to the supply of housing cannot be considered up to date. This includes the Minster settlement boundary.
- 10.82 The Court of Appeal has handed down judgment in the case of Gladman Developments Ltd v SSHCLG & Corby BC & Uttlesford DC [2021] EWCA Civ 104 dealing with paragraph 11(d)(ii) and the tilted balance in the National Planning Policy Framework that when answering the paragraph 11(d)(ii) question – whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of doing so, when assessed
- 10.83 The provisions on decision-taking in the second part of paragraph 11 of the NPPF set out a policy to guide decision-makers on the performance of their statutory responsibilities under s70(2) of the Town and Country Planning Act 1990 and s38(6) of the PCPA 2004, in the specific circumstances to which they relate:

- decision-makers are not legally bound to disregard policies of the development plan when applying the tilted balance under paragraph 11(d)(ii);
- it is neither a misinterpretation nor misapplication of paragraph 11(d)(ii), or taking into account an immaterial consideration, to have regard to development plan policies when dealing with the tilted balance question;
- the exercise of assessing a development's compliance with the policies in the NPPF could properly embrace consideration of related policies in the development plan, and sometimes this would make good sense because of the relationship between the two;
- the performance of the statutory duty under s38(6) and the performance of the tilted balance exercise may be inter-related, and conflict or compliance with development plan policies can bear on the assessment required by the NPPF policy in paragraph 11(d)(ii);
- the policies of the development plan will often inform the balancing exercise required under paragraph 11(d)(ii);
- in many cases it will facilitate the assessment of adverse impacts and benefits in the tilted balance to consider not only the relevant policies of the NPPF but also the corresponding policies of the development plan;
- a complete assessment under paragraph 11(d)(ii), in which adverse impacts and benefits are fully weighed and considered, may well be better achieved if relevant policies of the development plan are taken into account;
- whether and how policies of the plan are taken into account in the application of paragraph 11(d)(ii) will be a matter for the decision-maker's planning judgment, in the circumstances of the case in hand.

10.84 In this case although the site is outside the development boundary it is closely related to Minster, is a previously developed site and in an area where similar sites have been allocated in the plan and other former light railway sites have been developed. The site therefore partially meets the objectives of the development plan to focus development in suitable areas including previously developed land in urban areas such as Sheerness/Minster. Although the 5 year housing land shortfall is marginal the lack of harm caused by the development, and the sites compliance with the overall strategy of the local plan in focussing development on previously developed land and the main settlements means that even if the Borough were to regain its 5 year housing land supply the application of the tilted balance in this case, whether just below or just above the 5 YHLS, would indicate that this site should be approved.

10.85 No significant harm has been found in terms of landscape and there is no highway objection. A refusal on highway grounds would not be sustainable in national policy terms.

10.86 Overall, in terms of the tilted balance, including in terms of pursuit of the development plan objectives and the provision of housing, the balance strongly weighs in favour of the development.

11. RECOMMENDATION

Grant subject to conditions as set out below and the signing of a suitably-worded s106 agreement to secure the developer contributions as set out above. Delegated authority is also sought to amend condition wording and s106 clauses as may reasonably be required.

And to a section 106 obligation with the following heads of terms

Contribution Subject	Per Dwelling	Total	Paid to	Project
Primary Education	£6,800.00	£299,200.00	KCC	Towards the new 2FE Primary School construction upon land at Rushenden, Queenborough
Secondary Education	£4,540.00	£199,760.00	KCC	Towards Highsted & Borden Grammar School expansions
'Applicable' excludes: 1 bed units of less than 56 sqm GIA, and sheltered accommodation				
Community Learning	£16.42	£722.48	KCC	Contributions requested towards additional resources and classes at Sheerness Adult Education Centre
Youth Service	£65.50	£2,882.00	KCC	Contributions requested towards additional Youth Service resources locally

Library Service	£55.45	£2,439.80	KCC	Contributions requested towards additional services, resources, and stock at Minster Library
Social Care	£146.88	£6,462.72	KCC	Specialist care accommodation, Assistive technology systems, adapting Community facilities, sensory facilities and Changing places in Swale District
Waste	£183.67	£8,081.48	KCC	Towards additional capacity at the HWRC & WTS in Sittingbourne
KCC Highways	£1,200.00	£52,800.00	KCC	Contributions towards active travel and public transport in area
SAMMS	£281.00	£12,364.00	SAMMs	SAMMS management
GP/Primary Care	£360.00	£15,840	CCG	Towards facilities GP on Sheppey
Total Contributions		£600,552.48		

Notes:

*The KCC Highway Contributions are based on discussions with Alun Millard (KCC Highways £1200 per dwelling).

**The NHS Contributions are based on £360 per dwelling.

***SAMMS contributions are based on the formula of £281 per dwelling

All indexed to RPI

Conditions

1. Time Limit – Outline Schemes

The development to which this permission relates must be begun not later than the expiration of five years from the date of the grant of outline planning permission; or two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. Time Limit – Reserved Matters

Application for approval of reserved matters referred to in Condition (1) above must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

3. Design Code and Reserved Matters

Prior to or contemporaneous with the submission of any reserved matters referred to in condition 1 a site specific design code shall be submitted to and approved by the local planning authority showing scheme layout, finished site levels, building heights, a landscape and open space masterplan and the palette of building materials and elevational designs. Any subsequent reserved matters approval or variation shall be in accordance with the approved site specific design code.

Reserved matters details of the layout, scale, appearance, and landscaping for the development hereby permitted, shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

4. Approved Drawings

The development hereby approved shall be carried out in accordance with the following approved drawings:

- Site Location Plan
- Access for Approval SK001
- Proposed access design 66200254-SWE-ZZ-XX-DR-TP-0001 Revision P02

Reason: For the avoidance of doubt and in the interests of proper planning.

5. Details of Materials

Notwithstanding the submitted details, no development beyond the construction of foundations shall take place until details of the external finishing materials of the dwellings has been submitted to and agreed in writing by the Local Planning Authority. The details shall include brick, stone and roof tiles. The details as approved shall thereafter be implemented.

Reason: In the interests of visual amenities.

6. Restriction of Permitted Development Rights

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any Order revoking or re-enacting that Order),no development shall be carried out within Classes B and C and of Part 1 of Schedule 2 of that order

Reason: To prevent overlooking of adjoining properties and to safeguard the privacy of neighbouring occupiers.

7. Details of Parking and Cycle Parking

The details submitted pursuant to condition (1) above shall include details of the provision of vehicle parking and permanent retention of secure covered cycle parking facilities shall have been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in complete accordance with the approved details.

Reason: In the interests of highway safety and active travel.

8. Details of EV Parking

The details submitted pursuant to condition (1) (the reserved matters) shall include measures to provide electrical vehicle charging points and shall include; (a)Electric

vehicle charging points for all dwellings with parking facilities within their curtilage, (b)Electrical vehicle charging points to be provided to a minimum of 10% of all other residential parking areas., (c)Electrical vehicle charging points to be provided to a minimum of 10% of visitor parking spaces. No dwelling hereby permitted shall be occupied until the electric vehicle charging points for that dwelling have been installed. All Electric Vehicle Charging units shall be provided to Mode 3 standard with a minimum 7kw. The charging points shall be provided prior to first occupation of any dwelling hereby approved.

Reason: In the interest of sustainable development and encouraging sustainable modes of travel.

9. Details of Landscaping

The details submitted pursuant to condition (1) above shall include details of both hard and soft landscape works have been submitted to and approved in writing by Planning the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials,.

Reasons: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

10. Landscape Management and Maintenance

Prior to the commencement of works, a Landscape and Ecological Management Plan (LEMP) shall be submitted to, and be approved in writing by, the local planning authority. The content of the LEMP be based on the details in appendix C of the 'Biodiversity Unit Calculations' (KB Ecology April 2022) and include the following:

- a) Description and evaluation of features to be managed;
- b) Ecological trends and constraints on site that might influence management;
- c) Aims and objectives of management;
- d) Appropriate management prescriptions for achieving aims and objectives;
- e) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period;
- f) Details of the body or organisation responsible for implementation of the plan;
- g) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The approved plan will be implemented in accordance with the approved details.

The Landscape and Ecological Management Plan shall the landscape buffer along the south-eastern and south-western boundaries and communal amenity landscape areas outside of private resident ownership within the proposed development. The development shall then be carried out in complete accordance with the approved details.

Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting, or ten years for the structural planting along the southern and eastern boundaries, shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reason: In the interest of biodiversity and visual amenities.

11. Completion of Roads and Footways

Prior to first occupation of each of the dwellings hereby approved, the following works between a dwelling and the adopted highway shall have been completed:

- (a) Footways and/or footpaths, with the exception of the wearing course;
- (b) Carriageways, with the exception of the wearing course but including a turning facility, highway drainage, visibility splays, street lighting, street nameplates and highway structures (if any).

Reason: In the interests of highway safety and amenity.

12. SUDS/Drainage

No development shall not take place until the layout reserved matters details required by Condition 1 shall

- (a) demonstrate that requirements for surface water drainage for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm can be accommodated within the proposed development layout.
- (b) demonstrate that an effective outfall for surface water is provided for the development layout. This information may include details of surveys of watercourses and culverts and / or details of any works that may be necessary to deliver an effective outfall for surface water.
- (c) Submit a sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the local planning authority. The detailed drainage scheme shall be based upon the Sustainable Drainage Assessment dated 13th January 2022 and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site.

The drainage scheme shall also demonstrate (with reference to published guidance):

- that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.
 - appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker. The drainage scheme shall be implemented in accordance with the approved details.
- (d) development hereby permitted shall not be occupied until a Verification Report, pertaining to been submitted to and approved by the Local Planning Authority. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and, the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.

Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water, in line with National Policy (NPPF) and to ensure that the development does not exacerbate the risk of on/off site flooding. These details and accompanying calculations are required prior to the commencement of the development as they form an intrinsic part of the proposal, the approval of which cannot be disaggregated from the carrying out of the rest of the development.

13. Sustainable Design and Construction

Prior to the construction of any dwelling in any phase details of the materials and measures to be used to increase energy efficiency and thermal performance and reduce carbon emissions and construction waste shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved materials and measures.

Reason: To comply with Swale Sustainable Construction standards and make progress toward net zero.

14. Water Consumption

The residential development hereby permitted shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and no residential unit(s) shall be occupied until details of the measures used to achieve the rate for that unit(s) have been submitted to and approved in writing by the local planning authority.

Reason: To comply with Swale Sustainable Construction.

15. Accessible Housing

The details submitted pursuant to condition (1) above shall include details of 5% of all units to be constructed to the M4(3) standard. All other houses shall be constructed to the M4(2) standard.

Reason: To comply with Swale accessibility objectives.

16. Biodiversity Net Gain

Development shall not commence until there has been a biodiversity gain plan submitted to and approved by the local planning authority; to demonstrate how the proposal shall contribute to the development achieving a post development biodiversity value which will be a minimum of 20% higher than site pre-development biodiversity value. The calculation shall be in accordance with biodiversity metric 2. The post development biodiversity value may include off-site biodiversity gain under the control of the applicant and purchased biodiversity credits. This gain shall thereafter be maintained for a minimum period of 30 years in line with the biodiversity gain plan.

The development shall be carried out in full accordance with the approved biodiversity gain plan.

Any Off site credits must demonstrate in the biodiversity gain plan

- That it is On land made available by a site provider with sufficient rights to the land;
- That it will be delivered by a specified person or body considered fit and proper to undertake the enhancement works;
- The land will be suitably managed to meet the required enhancement;
- That Work commenced 30 January 2020 or later;
- That the enhancement will be maintained for at least 30 years after the completion of those works;
- That the credit is measured using the most up to date biodiversity metric against a baseline metric assessment;
- That the credit may be allocated to development in accordance with the terms of the conservation covenant or planning obligation;
- That the credit is available to be allocated to this development;
- That it complies with rules on additionality and stacking including on protected sites;
- That it is in England, and;
- Monitoring and reporting for that site over the 30 year period.

Reason: To meet national and local policy on biodiversity net gain.

17. Construction Hours of Working

No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times: Monday to Friday 0730-1800 hours, Saturdays 0800–1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

18. Piling Hours of Working

No impact pile driving in connection with the construction of the development shall take place on the site on any Saturday, Sunday or Bank Holiday, nor any other day except between the following times:- Monday to Friday 0900-1700 hours unless in association with an emergency or with the written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

19. Construction Environment Management Plan

Prior to the commencement of the development, a Construction Environment Management plan shall be submitted to and approval in writing by the Local Planning Authority. The construction of the development shall then be carried out in accordance with the approved Code of Construction Practice and BS5228 Noise Vibration and Control on Construction and Open Sites and the Control of dust from construction sites (BRE DTi Feb 2003) unless previously agreed in writing by the Local Planning Authority. The code shall include:

- Hours of working and timing of deliveries
- An indicative programme for carrying out the works Measures to minimise the production of dust on the site(s)
- Measures to minimise the noise (including vibration) generated by the construction process to include the careful selection of plant and machinery and use of noise mitigation barrier(s)
- Maximum noise levels expected 1 metre from the affected façade of any residential unit adjacent to the site(s)
- Design and provision of site hoardings
- Management of traffic visiting the site(s) including temporary parking or holding areas
- Provision of off-road parking for all site operatives
- Measures to prevent the transfer of mud and extraneous material onto the public highway • Routing of construction and delivery vehicles to / from site, including the number of vehicles
- Measures to manage the production of waste and to maximise the re-use of materials

- Measures to minimise the potential for pollution of groundwater and surface water
- Provision of wheel washing facilities
- Temporary traffic management / signage
- The location and design of site office(s) and storage compounds
- The location of temporary vehicle access points to the site(s) during the construction works

Reason: In the interests of residential amenity, highway safety (on the local and national networks) and amenity.

20. High Speed Broadband

Before development commences details shall be submitted for the installation of fixed telecommunication infrastructure and High-Speed Fibre Optic (minimal internal speed of 1000mb) connections to multi point destinations and all buildings including residential, commercial and community. The infrastructure installed in accordance with the approved details during the construction of the development, capable of connection to commercial broadband providers and maintained in accordance with approved details.

Reason: To facilitate high speed broadband.

21. Construction Logistics Management plan

Submission of a Construction Logistics Management Plan before the commencement of any development on site to include the following:

- (a) Routing of construction and delivery vehicles to / from site
- (b) Parking and turning areas for construction and delivery vehicles and site personnel
- (c) Timing of deliveries
- (d) Provision of wheel washing facilities
- (e) Temporary traffic management / signage

Reason: To protect amenities.

22. Completion of Access

The access shown on the hereby approved plans - Access for Approval 66200254-SWE-ZZ-XX-DR-TP-0001 Revision P02 -shall be completed prior to occupation.

Gradient of the access to be no steeper than 1 in 10 for the first 1.5 metres from the highway boundary and no steeper than 1 in 8 thereafter.

Reason: To ensure proper and safe access.

23. Reserved Matter Street Layout

The reserved matters application as mentioned in condition one shall include details of the following; proposed roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, driveway gradients, car parking and street furniture

To be laid out and constructed in accordance with reserved matters detailed approved.

Reason: To ensure proper and safe streets.

Informatives

- (1) This permission has only been granted after receipt of a financial contribution to the Strategic Access Management and Monitoring Strategy in respect of the nearby Special Protection Area.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

- (2) The applicant/developer should enter into a formal agreement with Southern Water to provide the necessary sewerage infrastructure required to service this development. The applicant/developer should contact Southern Water, Sparrowgrove House, Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330 303 0119) or www.southernwater.co.uk in order to progress the required infrastructure.
- (3) Kent County Council recommends that all developers work with a telecommunication partner or subcontractor in the early stages of planning for any new development to make sure that Next Generation Access Broadband is a fundamental part of the project. Access to superfast broadband should be thought of as an essential utility for all new homes and businesses and given the same importance as water or power in any development design. Please liaise with a telecom provider to decide the appropriate solution for this development and the availability of the nearest connection point to high-speed broadband. We understand that major telecommunication providers are now offering Next Generation Access Broadband connections free of charge to the developer. For advice on how to proceed with providing access to superfast broadband please contact broadband@kent.gov.uk
- (4) The following points should be noted wherever infiltration drainage (such as soakaways) is proposed at a site:
 - Appropriate pollution prevention methods (such as trapped gullies or interceptors) should be used to prevent hydrocarbons draining to ground from roads, hardstandings and car parks.
 - Clean uncontaminated roof water should drain directly to the system entering after any pollution prevention methods.
 - No infiltration system should be sited in or allowed to discharge into made ground, land impacted by contamination or land previously identified as being contaminated. There must be no

direct discharge to groundwater, a controlled water. An unsaturated zone must be maintained throughout the year between the base of the system and the water table. • A series of shallow systems are preferable to systems such as deep bored soakaways, as deep bored soakaways can act as conduits for rapid transport of contaminants to groundwater. • Where infiltration SuDS are proposed for anything other than clean roof drainage in a Source Protection Zone 1, a hydrogeological risk assessment should be undertaken, to ensure that the system does not pose an unacceptable risk to the source of supply.

- (5) Given the impermeable nature of the site we will expect for clarification to be provided as part of the detailed design submission as to how surface water from the 'undeveloped areas' is prevented from entering the positively drained network and exceeding its designed capacity.
- (6) Any feature capable of conveying water can be considered to fall under the definition of an 'ordinary watercourse' and we would urge the applicant to contact us prior to undertaking any works that may affect any watercourse/ditch/stream or any other feature which has a drainage or water conveyance function. Any works that have the potential to affect the watercourse or ditch's ability to convey water will require our formal flood defence consent (including culvert removal, access culverts and outfall structures). Please contact flood@kent.gov.uk for further information.
- (7) Contaminated soil that is, or must be disposed of, is waste. Therefore, its handling, transport, treatment and disposal is subject to waste management legislation, which includes: Duty of Care Regulations 1991 Hazardous Waste (England and Wales) Regulations 2005 Environmental Permitting (England and Wales) Regulations 2010 The Waste (England and Wales) Regulations 2011 Developers should ensure that all contaminated materials are adequately characterised both chemically and physically in line with British Standard BS EN 14899:2005 'Characterization of Waste - Sampling of Waste Materials - Framework for the Preparation and Application of a Sampling Plan' and that the permitting status of any proposed treatment or disposal activity is clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays. If the total quantity of waste material to be produced at or taken off site is hazardous waste and is 500kg or greater in any 12 month period the developer will need to register with us as a hazardous waste producer. Refer to our website at <https://www.gov.uk/government/organisations/environment-agency> for more information.
- (8) It is the responsibility of the applicant to ensure, before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority. Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the road. This is called 'highway land'. Some of this land is owned by The Kent County Council (KCC) whilst some are owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil. Information about how to clarify the highway boundary can be found at <https://www.kent.gov.uk/roads-and-travel/what-we-look-after/highway-land/highway-boundary-enquiries>

The Council's approach to this application:

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by: Offering pre-application advice. Where possible, suggesting solutions to secure a successful outcome. As appropriate, updating applicants/agents of any issues that may arise in the processing of their application. In this instance: The applicant/agent was advised of minor changes required to the application and these were agreed. The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017

This Appropriate Assessment has been undertaken without information provided by the applicant. The application site is located within 6km of The Swale Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Due to the scale of development there is no scope to provide on site mitigation such as an on-site dog walking area or signage to prevent the primary causes of bird disturbance, which are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats. The proposal thus has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development. In considering the European site interest, Natural England (NE) advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advises that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation, the proposal is unlikely to have significant effects on these sites.

The recent (April 2018) judgement (People Over Wind v Coillte Teoranta, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, "it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site." The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of the mitigation measures agreed between Natural England and the North Kent Environmental Planning Group (NKEPG).

NE has stipulated that, when considering any residential development within 6km of the SPA, the Council should secure financial contributions to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the (NKEPG) and that such strategic mitigation must be in place before the dwelling is occupied. Based on the correspondence with Natural England (via the NKEPG),

your officers conclude that off site mitigation is required. In this regard, whilst there are likely to be impacts upon the SPA arising from this development, the mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff (normally to be secured by either s106 agreement or unilateral undertaking on all qualifying developments) will ensure that these impacts will not be significant or long-term. Your officers therefore consider that, subject to mitigation, there will be no adverse effect on the integrity of the SPA.

It can be noted that the required mitigation works will be carried out by Bird Wise, the brand name of the North Kent Strategic Access Management and Monitoring Scheme Page 30 Report to Planning Committee – 10 March 2022 ITEM 2.1 (SAMMS) Board, which itself is a partnership of local authorities, developers and environmental organisations, including SBC, KCC, Medway Council, Canterbury Council, the RSPB, Kent Wildlife Trust, and others. The Agent has confirmed agreement to pay the SAMMS fee subject to the outcome of the Committee.



21/503124/OUT - land to the north of Elm Lane Minster on Sea ME12 3RZ
Scale: 1:2500
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